

# **EXHIBIT 12**

UNDER PROTECTIVE ORDER

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1 UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF VIRGINIA  
3 CASE NO.: 2:18cv530  
4

5 CSX TRANSPORTATION, INC.,  
6 individually and on behalf of  
7 NORFOLK & PORTSMOUTH BELT LINE  
8 RAILROAD COMPANY,  
9 Plaintiff,  
10 vs.

11 NORFOLK SOUTHERN RAILWAY  
12 COMPANY, et al.,

13 Defendants.  
14 \_\_\_\_\_/

15 TRANSCRIPT DESIGNATED UNDER PROTECTIVE ORDER  
16 VIDEOTAPED DEPOSITION OF  
17 DEAN PIACENTE  
18 Friday, January 15, 2021  
19 10:33 a.m. - 4:51 p.m.  
20 Remote Proceedings  
21  
22  
23

24 Stenographically Reported By:  
25 Gina Rodriguez, RPR, CRR, CCP  
Job No. CS4376064

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1 drayage?

2 A. NIT specifically.

3 Q. Any other --

4 A. Could have been -- it could have been  
5 drayage provided by the other terminals in the Port  
6 of Virginia, but I don't -- I don't recall those  
7 specifics. It could have happened.

8 Q. And how about outside the Port of Virginia,  
9 are there other ports along the East Coast that CSX  
10 relies on drayage?

11 A. Yes, there are.

12 Q. Can you tell me which ones those are.

13 A. The Port of Charleston, and from what I  
14 recall, the Port of Jacksonville.

15 Q. Does CSX ever dray at the Port of  
16 New York/New Jersey?

17 A. Again, we don't -- we don't provide the  
18 drayage services, so I -- I would not know that. But  
19 generally speaking, any shipments that would come out  
20 of the port -- any international intermodal shipments  
21 that would come out of the Port of New York and New  
22 Jersey, were typically loaded on a dock onto a rail  
23 dock.

24 Q. And I think you said that CSX relies on  
25 drayage at the Port of Jacksonville; is that right?

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1 "run," out of the Port of Virginia specifically we  
2 were able to run westbound, north and then west.

3 Q. And I think you said that there was --  
4 there was a second portion of the project to create  
5 another set of tracks; is that right?

6 A. Right.

7 Q. And when was that portion completed?

8 A. I don't recall the date that may have come  
9 after my time, but I believe it was sometime in 2018.

10 Q. So once the second set of tracks was  
11 completed, CSX was able to run more trains to and  
12 from the Port of Virginia; is that right?

13 A. We had the capability to if the volume was  
14 there.

15 Q. And --

16 A. I don't think it was -- it was required at  
17 that point for the volume that we had because it is  
18 always highly dependent on demand, and I don't recall  
19 that it was -- it was necessarily an obstacle for us,  
20 having the second train.

21 Q. And would this apply to cargo moving from  
22 the Port of Virginia to the Midwest?

23 A. Yes.

24 Q. So in late 2016, after the Virginia Avenue  
25 Tunnel was completed, CSX had doubled its capacity

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1 out of the Port of Virginia; is that right?

2 A. We had the ability to run double --  
3 double-stack clearance, which gave us an economic  
4 improvement and a capacity improvement. Whether it  
5 was double -- you could say it's double the  
6 containers on a train, yes.

7 Q. So when you say "capacity improvement," are  
8 you referring to double the amount of containers?

9 A. On a train, yes.

10 Double -- double-stack on the train versus  
11 lengthening a train of single containers,  
12 single-stack.

13 Q. What are the benefits of running a  
14 double-stack train as compared to a single-stack  
15 train?

16 A. Well, the benefits are as more volume comes  
17 on, you have the capability to handle it coming off  
18 of a port, and that's important for the ports so you  
19 don't have congestion.

20 And, certainly, there is an economic  
21 benefit of having two containers on a -- you know,  
22 stacked on top of one another versus one and you  
23 pulling it with the same locomotives and crews.

24 Q. So when you said that, you know, one of the  
25 benefits is as more volume comes on, you have the

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1 MR. JUSTUS: Objection, misstates prior  
2 testimony.

3 A. Coming out of the Port of Virginia  
4 terminals, the primary competitor in consideration  
5 was Norfolk Southern.

6 BY MR. GENTRY:

7 Q. Does CSX ever consider the truck rates out  
8 of the Port of Virginia?

9 A. We certainly would look at the truck rates  
10 to inland points, but we felt confident that when  
11 we're beyond the 200-mile inland movements, that the  
12 primary competitor would be the Norfolk Southern from  
13 the Port of Virginia. We believed that we could  
14 confidently offer a more competitive rate than  
15 truckers could offer to places like the Ohio Valley  
16 and Illinois.

17 Q. But CSX --

18 A. Sure.

19 Q. But CSX is looking at those truck rates  
20 because they consider trucks to compete for that  
21 business, right?

22 A. Not -- not to that distance.

23 If -- typically truckers just don't go  
24 that far. So it is not a -- it's a very minor  
25 consideration.

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1 Q. Could you tell me what "discretionary  
2 cargo" means.

3 A. Well, as I understand "discretionary  
4 cargo," I would define it as the cargo that lands at  
5 a port that is not destined to the near-end-to-port  
6 consumers.

7 So in the case of the Port of Virginia,  
8 the near-end markets -- like Washington, D.C.;  
9 Richmond, Virginia; perhaps North Carolina -- would  
10 be primary base loads destinations, and  
11 discretionary traffic would be the traffic that  
12 would travel further inland to, like, the Ohio  
13 Valley and Illinois. It would be the minority of  
14 the traffic on a ship.

15 Q. So is it -- would it be accurate to say  
16 that those inland markets don't have a port in the  
17 immediate vicinity?

18 A. The inland markets don't have -- the inland  
19 markets of Ohio and Illinois, they have river ports,  
20 but those river ports don't have large steamship  
21 lines calling on those ports. They're typically  
22 bulk-product-type ports that float up a river.

23 Q. And for -- for discretionary cargo destined  
24 for, you know, these inland ports -- or, sorry, these  
25 inland markets, can ocean carriers call on more than

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1 one port to transport that cargo?

2 A. Ocean carriers that land on the East Coast  
3 for -- there are reasons for landing on the  
4 East Coast -- might have traffic that comes to  
5 different ports for their own modeling reasons,  
6 economically and operationally. I couldn't say what  
7 those are. But yes, there could be traffic that is  
8 handled over different ports to the same markets.

9 Said another way, Chicago traffic can come  
10 in from the West Coast, it can also -- it can also  
11 come in through the East Coast.

12 Q. Do you ever see ports compete for  
13 discretionary cargo?

14 A. I can't say how the -- how the ports  
15 compete, but I can say that the ports are spending an  
16 enormous amount of money expanding and deepening  
17 their waterways to be a more effective competitor to  
18 other ports. So you -- when you read public  
19 releases, you can see the ports promoting their  
20 capabilities to attract traffic.

21 Q. Mr. Piacente, I want to ask you a little  
22 bit about CSX services in Virginia, if that's all  
23 right.

24 A. Sure.

25 Q. So it's my understanding that CSX provides